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10 SVP PARTNERS, LLC

11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 GEORGE AVALOS, and Individual,
14 Plaintiff,
15 v.
16 SVP PARTNERS, LLC, a California LLC,
17 Defendants.

18 Case No. 1:20-cv-01381-DAD-EPG

19 **DEFENDANT SVP PARTNERS, LLC'S**
REQUEST FOR WITHDRAWAL OF
MOTION TO DISMISS PLAINTIFF'S
COMPLAINT FOR INSUFFICIENT
SERVICE OF PROCESS PURSUANT
TO F.R.C.P. RULE 12(b)(5) AND
[PROPOSED] ORDER THEREON

20 Complaint Filed: September 30, 2020

21 Date: February 19, 2021
(Reset to March 2, 2021 at 9:30 A.M., C/R 5)
Time: 10:00 a.m.
Courtroom: 10

22 The Honorable Erica P. Grosjean Presiding

Defendant, SVP PARTNERS, LLC (hereinafter “SVP PARTNERS” or “Defendant”) filed a Motion to Dismiss Plaintiff George Avalos’s Complaint For Damages And Injunctive Relief For: (1) Violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12181 *et seq.* as amended by the ADA Amendments Act of 2008 (P.L. 110-325) and (2) Violations of the Unruh Civil Rights Act, California Civil Code §51 *et seq.* (“Complaint”) on January 22, 2021 (Docket No. 15), pursuant to Federal Rule of Civil Procedure 12(b)(5) for insufficient service of process. The Motion was originally set to be heard on February 19, 2021 before Magistrate Judge Erica P. Grosjean. That date was vacated and reset for March 2, 2021 and to be heard by District Judge Dale A. Drozd (Docket No. 16, Minute Order).

10 Defendant's Motion to Dismiss was premised upon the improper Service of Plaintiff's
11 Complaint as it failed to include a Summons. *See* Docket No. 5. Subsequent to discussions regarding
12 the defects in service and in the consideration of judicial resources—Plaintiff has cured the defects
13 and Defendant's counsel has accepted service of the Complaint and executed the Notice and
14 Acknowledgement of Receipt of Summons and Complaint (Docket No. 18).

IT IS HEREBY REQUESTED that the Court withdraw Defendant's Motion to Dismiss Plaintiff's Complaint (Docket No. 15) set to be heard on March 2, 2021 by District Judge Dale A. Drozd (Docket No. 16, Minute Order).

IT IS FURTHER REQUESTED that the Court vacate the briefing schedule affiliated with Defendant's Motion to Dismiss Plaintiff's Complaint (Docket No. 15).

DATED: February 11, 2021 PUTTERMAN | YU LLP

By: /s/ *Danielle M. Campbell*

DANNIELLE M. CAMPBELL

Attorneys for Defendant SVP PARTNERS, LLC

1 **[PROPOSED] ORDER**

2 IT IS HEREBY ORDERED that:

3 1. The hearing on Defendant SVP PARTNERS, LLC's Motion to Dismiss Plaintiff's
4 Complaint (Docket No. 15) is vacated.
5 2. Defendant SVP PARTNERS, LLC's Motion to Dismiss Plaintiff's Complaint (Docket
6 No. 15) will be withdrawn in its entirety, thereby vacating the briefing schedule for both
7 parties.

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9 IT IS SO ORDERED.

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11 DATED: February __, 2021

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14 Honorable Dale A. Drozd
15 Judge of the United States District Court

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